

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Sprint Communications Company LP Application
for Review of the Tekstar Communications, Inc.
Tariff

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) WC Docket No. 10-226
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REPLY COMMENTS OF NATIVE AMERICAN TELECOM, LLC

Pursuant to the Commission's *Notice*,¹ Native American Telecom, LLC ("NAT") respectfully submits these Reply Comments to the *COMMENTS OF AT&T CORP.*² filed in support of the Application for Review that was filed by Sprint Communications Company, LP ("Sprint").³ Sprint's Application for Review seeks review and reversal of the October 6, 2010, Public Notice released by the Pricing Policy Division of the Wireline Competition Bureau ("Bureau"),⁴ wherein the Bureau denied all petitions to reject or suspend and investigate the access tariff filed by Tekstar Communications, Inc. ("Tekstar").⁵

¹ Public Notice, *Comment Sought on Sprint Communications Company LP Application For Review Of The Tekstar Communications, Inc. Tariff*, WC Docket No. 10-226, DA 10-2196 (rel. Nov. 16, 2010) ("Notice").

² *Comments of AT&T Corp.*, WC Docket No. 10-226 (Dec. 1, 2010).

³ *In the Matter of Sprint Communications Company LP Application For Review of the Tekstar Communications, Inc. Tariff*, Application for Review, WC Docket No. 10-226 (Nov. 9, 2010).

⁴ Public Notice, *Protested Tariff Transmittals Action Taken*, WCB/Pricing File No. 10-09, DA 10-1917 (rel. Oct. 6, 2010).

⁵ Tekstar, Transmittal No. 3, Tariff F.C.C No. 2 (issued Aug. 17 2010) ("Tariff No. 2").

INTRODUCTION AND SUMMARY

The INTRODUCTION AND SUMMARY section of *COMMENTS OF AT&T CORP.* is a misplaced condemnation of all so-called “access stimulation,” in which AT&T has distorted the goals put forth in the Commission’s National Broadband Plan⁶ and misinterpreted the conclusions of the Commission’s Opinion in the Second Order on Reconsideration *In the Matter of Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Company*.⁷ AT&T’s Argument also misinterprets Rule 61.74.

ARGUMENT

A. AT&T’s Discussion of “Access Stimulation” is Erroneous and Irrelevant

AT&T argues that Tekstar’s new tariff is an effort to circumvent the rules of the Commission and implies that *Farmers II* forbids a carrier from tariffing access services for terminating traffic to conference calling providers. Simply stated, *Farmers II* is a case where the Commission concluded that services offered by Farmers & Merchants Mutual Telephone Company (“Farmers”) did not fit within the definitions in Farmers’ tariff. The Commission recognized that Farmers’ tariff defined switched access service in a manner that was “narrower” than the “Act and Commission rules,” but nevertheless concluded that Farmers was bound by the definitions in its tariff.⁸ Therefore, the Commission concluded that the relationship between Farmers and its conferencing service provider customers did not fit within the tariff’s definition of “end users” and thus, under Farmer’s tariff, Farmers was not providing “switched access” to

⁶ Connecting America: The National Broadband Plan, Federal Communications Commission, at 142 (“National Broadband Plan”).

⁷ *Qwest Comm’n’s Corp. v. Farmers & Merchants Mut. Tel. Co.*, 24 FCC Rcd. 14801, Second Order on Reconsideration (Nov. 25, 2009) (“*Farmers II*”).

⁸ *Id.* ¶ 24.

the IXCs.⁹ The Commission went on to say that “the unusual facts of this case (i.e., the relationship between Farmers and the conference calling companies) do not alter the fact that **Farmers is bound by the terms of its tariff.**”¹⁰

In *Farmers II*, the Commission did not say, however, as AT&T purports, that access stimulation constitutes “illegal traffic pumping schemes,” or that any tariff that changed the definition of “end user” to ensure that the services it provided fit within the Act’s definition of “switched access” must be fatally flawed. In fact, the Commission in *Farmers II* says that “Farmers is not precluded from receiving any compensation at all for the services it has provided to Qwest,”¹¹ which surely would not be the case if Farmers’ agreement to host conferencing traffic constituted an “illegal scheme.”

B. Application of Rule 61.74 Did Not Warrant Rejection of Tekstar’s Tariff

When AT&T finally addresses the argument raised by Sprint, that Tekstar’s Tariff No. 2 is unlawful because it relies on a cross-reference to its local tariff, it misinterprets Rule 61.74 to say that a tariff that even mentions another document is void *ab initio*. As Tekstar has articulated, Section 61.74 of the Rules is aimed at references that operate to incorporate the content of those other documents into the terms and conditions of the federal tariff, something which does not occur in Tekstar’s new tariff. Rather, Tekstar’s FCC Tariff No. 2 states a truism: a Tekstar “end user” “subscribes” “to obtain from [Tekstar] local exchange service *under the terms and conditions of [Tekstar’s] local exchange tariff*, and to be billed and pay for such services *under any applicable terms governing the payment of the services provided*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, ¶ 24 & n.96.

thereunder.”¹² Thus, Tekstar refers to its “local exchange tariffs” to make clear that which is should already be plain, an “end user” is a party that receives service from Tekstar pursuant to its local exchange tariff, while an IXC receives access services from Tekstar pursuant to its switched access tariff. This so-called “cross-reference” is no cross reference at all, because Tekstar is not attempting to rely upon the local exchange tariff for purposes of defining the IXCs’ obligations or rates, all of which are clearly set forth in Tekstar’s FCC Tariff No. 2.

CONCLUSION

Tekstar has implemented a tariff that actually lowers the cost to the IXCs and addresses the concern stated by the Commission in its National Broadband Plan that rural local exchanges with high switched access rates premised on low traffic volumes are attracting high traffic volume end users and collecting the higher access rate. Tekstar’s tariff, which has a tiered structure designed to lower the switched access rate to the carrier when the volume of traffic increases, preserves the benefits and purposes of the rural tariff while curtailing the inequity created by a high volume of traffic terminated in a rural local exchange. Native American Telecom, LLC respectfully requests that the Commission reject Sprint’s Application for Review and give no weight to AT&T’s misplaced allegations and arguments.

Respectfully submitted,

/s/ Scott R. Swier

Scott R. Swier

Swier Law Firm, Prof. LLC

133 N. Main Street

P.O. Box 256

Avon, South Dakota 57315

(605) 286-3218

Attorneys for Native American Telecom, LLC

December 13, 2010

¹² Tariff No. 2, § 2.6 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on *December 13, 2010*, I caused true and correct copies of the foregoing *Reply Comments of Native American Telecom, LLC*, to be served on all parties as shown below.

Dated: December 13, 2010
Avon, South Dakota

/s/ Scott R. Swier

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(by electronic filing)

Best Copy and Printing, Inc.
Portals II
445 12th St., S.W., Room CY-B402
Washington, D.C. 20554
Email: FCC@BCPIWEB.COM
(by email).

Pamela Arluk
Assistant Division Chair
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A225
Washington, D.C. 20554
Tel. (202) 418-1520
Email: pamela.arluk@fcc.gov
(by email)